

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VICTORIA STARK-ROMERO, individually
and as Personal Representative of the
Estate of FRED P. STARK,

Plaintiffs,

v.

Civ. No. 09-295 MV/RLP

THE NATIONAL RAILROAD PASSENGER
COMPANY (AMTRAK), *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant City of Las Vegas' Motion for Protective Order. The City requests the Court to stay discovery pending resolution of its pending Motion to Dismiss [Doc. 7]. Plaintiffs recently served the City with interrogatories and requests for production of documents. The City argues that the discovery is not needed for the district court's determination of its Motion to Dismiss and that the discovery is "excessive and burdensome" in light of its pending Motion. The City further argues that the federal rules allow only 25 written interrogatories and that Plaintiff served 34 interrogatories. See Fed.R.Civ.P. 33(a)(1).

The Court has discretion whether to stay discovery pending the outcome of a dispositive motion pursuant to Fed.R.Civ.P. 26(c). *Monreal v. Potter*, 367 F.3d 1224, 1238 (10th Cir. 2004). However, the general policy in the circuit is not to stay discovery when dispositive motions are pending. *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990).

The Court has reviewed the requested discovery and the parties' submissions. All of the matters on which discovery is sought are discoverable and the Court finds that no compelling argument has been advanced to support a stay. The Motion to Dismiss has been pending for almost one year and to stay discovery might unnecessarily extend the litigation. The Court also notes that resolution of this claim will not resolve the entire case. Accordingly, the request for a protective order staying discovery is denied.

The Court does find, however, that Plaintiffs have exceeded the number of interrogatories allowed by Fed.R.Civ.P. 33(a)(1). Counsel for Plaintiffs is instructed to contact Defendant City's counsel within five (5) days of entry of this Order to advise which of the 25 interrogatories Defendant City should submit a response.

IT IS THEREFORE ORDERED that Defendant City of Las Vegas' Motion for Protective Order Staying Discovery [Doc.67] is granted in part and denied in part as stated herein.

IT IS SO ORDERED.



Richard L. Puglisi
Chief United States Magistrate Judge